

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 6860

Petitions of Vermont Electric Power Company, Inc. (VELCO), )  
Vermont Transco, LLC, Green Mountain Power Corporation )  
(GMP), and Central Vermont Public Service Corporation )  
(CVPS) for a certificate of public good, pursuant to 30 V.S.A. )  
Section 248, authorizing VELCO to construct the so-called )  
Northwest Vermont Reliability Project, said project to include: )  
(1) upgrades at 12 existing VELCO and GMP substations )  
located in Charlotte, Essex, Hartford, New Haven, North )  
Ferrisburgh, Poultney, Shelburne, South Burlington, Vergennes, )  
West Rutland, Williamstown, and Williston, Vermont; (2) the )  
construction of a new 345 kV transmission line from West )  
Rutland to New Haven; (3) the reconstruction of a portion of a )  
34.5 kV and 46 kV transmission line from New Haven to South )  
Burlington; and (4) the reconductoring of a 115 kV transmission )  
line from Williamstown to Barre, Vermont )

Order entered: 12/10/2007

**ORDER RE DESIGN PLANS FOR MEACH COVE/MCCABE'S BROOK AREA**

**I. INTRODUCTION**

On January 28, 2005, the Public Service Board ("Board") issued an Order and Certificate of Public Good ("CPG") approving, with modifications and conditions, the Northwest Vermont Reliability Project proposed by Vermont Electric Power Company, Inc. (now Vermont Transco, LLC) (collectively "VELCO") and Green Mountain Power Corporation ("GMP"). A condition of the January 28 Order and CPG stated:

Petitioners shall file, for the Board's approval, final construction plans for the 345 kV line, 115 kV line, and the substation upgrades, concurrent with plans for aesthetic and environmental mitigation, as required by the post-certification process described in the Order. Petitioners may commence construction only after receiving approval for such plans, and receipt of all necessary permits.

Since the January 28 Order, VELCO has filed design plans for various portions of the project and received approval for the majority of the areas. In today's Order, we approve VELCO's

August 15, 2007, proposed "Limerick Road" route across the Meach Cove Real Estate Trust ("Meach Cove") property in Shelburne.

## **II. BACKGROUND AND PROCEDURAL HISTORY**

In an Order issued June 25, 2007, the Board addressed VELCO's proposed final design plans for much of the 115 kV line. In that Order we reviewed VELCO's plans for locating the line within the Meach Cove property, largely following Limerick Road. Meach Cove had requested that the line be placed underground in this area, or that it be moved to the west to the vicinity of McCabe's Brook. The Town of Shelburne ("Shelburne") had requested an opportunity for further discussion of the underground and the McCabe's Brook alternatives.

After considering the parties' arguments and the evidence presented, the Board concluded:

that underground placement of the line in the Meach Cove property is not warranted, due to its cost and due to the availability of an acceptable overhead design. We have previously concluded in this Docket that underground placement of the 115 kV line is so costly that it should only be reserved for those locations where an acceptable overhead design proves unattainable. With respect to the Meach Cove property, as the above findings demonstrate, VELCO's November 29 proposal represents an overhead design that would not result in undue adverse aesthetic impacts, unless the line can be relocated to the McCabe's Brook wetland. Thus, we conclude that the transmission line can be constructed above-ground in this area without undue adverse aesthetic impacts, either in the vicinity of the McCabe's Brook wetland or, failing that, in accordance with VELCO's November 29 design (with the additional conditions noted below). Thus underground placement in this area is not justified.

Finally, even if the line cannot be located in the McCabe's Brook wetland, other mitigating measures must be implemented before we could issue final approval for VELCO's November 29, 2006, design plan for the Meach Cove property. Those mitigating measures are: (1) the acute angle at pole 297C must be eliminated if possible; (2) VELCO must make all reasonable efforts to retain existing vegetation in the Meach Cove property; (3) at Bostwick Road, poles 271 through 274 must be relocated to the west to save the existing tree line as an intact background element for the poles; and (4) near Harbor Crossing, VELCO must make all reasonable efforts to minimize the width of the cut going uphill (back towards the Meach Cove property). We require VELCO to modify its November 29 plans accordingly, and submit the modified plans by August 15, 2007.<sup>1</sup>

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1. Order of 6/25/07 at 24-25.

In the June 25 Order we explained why further evaluation of a McCabe Brook alternative was needed:

In light of these design challenges [on the Meach Cove property] and the long-term impacts of the transmission line, we need to ensure that the best possible alternative has been selected. For these reasons, we are persuaded by Meach Cove and Shelburne's argument that a further evaluation of the possibility of locating the line in, or near, the McCabe's Brook wetland is warranted. In the course of this evaluation, VELCO must consult in good faith with Meach Cove, any other affected property owners, Shelburne, ANR, and the Department in an attempt to develop an acceptable line location in or near the McCabe's Brook wetland.

This evaluation may well confirm VELCO's contention that McCabe's Brook is not a viable alternative. However, at this time we are not persuaded that VELCO has made every reasonable effort to site the line in the vicinity of that wetland. Because VELCO's November 29 proposal would have an adverse impact on aesthetics, the Quechee analysis requires VELCO to implement generally available mitigating steps that a reasonable person would take, in order to avoid an undue adverse impact.<sup>2</sup>

On August 15, 2007, VELCO submitted modified plans for the Limerick Road route through the Meach Cove property, along with a feasibility report on locating the line in the McCabe Brook wetland complex. The modified Meach Cove plans reflected the mitigating measures that the Board required, except for the third measure (relocation of poles 271 through 274) which VELCO rejected due to concerns expressed by Meach Cove.

On September 24, 2007, VELCO filed testimony on the Meach Cove and McCabe Brook alternate locations for the 115 kV line. On October 16, 2007, Meach Cove and ANR each filed testimony on the Meach Cove and McCabe Brook locations. On November 1 and 2, 2007, the Board held technical hearings on the two alternate locations.

On November 26, 2007, Meach Cove filed a letter seeking to clarify testimony that its witness, Christopher Davis, had provided at the November 1 hearing. That testimony related to Meach Cove's willingness to grant an easement for underground placement of the line on the Meach Cove property. On November 27, 2007, VELCO filed a letter objecting to Meach Cove's clarification.

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2. Order of 6/25/07 at 23–24.

We need not rule upon the permissibility of Meach Cove's November 26 filing because, as explained below: (1) we have previously determined that underground placement of the line is not necessary in this area, and (2) we will consider an undergrounding proposal only if it represents an agreement among all involved parties, including Meach Cove and VELCO.

### **III. FINDINGS**

1. VELCO's August 15, 2007, filing sets forth two routes for the transmission line through the Meach Cove property. The two routes are identical as they pass through the southern portion of the Meach Cove property, until pole 290. The first route — the "Limerick Road Route" — follows Limerick Road starting at pole 290, and is located to the west of the McCabe Brook wetland complex. The Limerick Road Route is essentially the same as VELCO's November 29, 2006, proposal that the Board reviewed in the June 25, 2007, Order, except that the August 15 filing eliminates an acute angle at pole 297C. Hollenbaugh 9/24/07 pf. at 5-6; exh. VELCO-Meach Cove H&S-3.

2. The second route — the "Wetland Route" — places the line in the McCabe Brook wetland complex from pole 290 until it leaves the Meach Cove property. VELCO also considered a variation of the Wetland Route that would have located the line further west within the wetland complex; VELCO ruled out this variation because the line would have been located too close to a rock ledge and would have required removal of a significant amount of forest between the wetland and Limerick Road. Hollenbaugh 9/24/07 pf. at 6; exh. VELCO-Meach Cove H&S-4.

3. Both routes — the Limerick Road Route and the Wetland Route — are located on property owned by Meach Cove, up to and including pole 299. Exh. VELCO-Meach Cove H&S-3 and -4; tr. 11/1/07 at 14 (Davis).

4. Locating the 115 kV transmission line through the McCabe Brook wetland complex, while technically feasible, would present significant challenges in the design, construction and maintenance of the line, including difficulties in vegetation management. Hollenbaugh 9/24/07 pf. at 7; Hoover/Storo 9/24/07 pf. at 7–14; Disorda 9/24/07 pf. at 3; tr. 11/2/07 at 140–141 (Storo), 146–147 (Hoover).

5. Although the Wetland Route is estimated to cost approximately \$133,000 less than the Limerick Road Route (largely due to the smaller number of poles required for the Wetland Route), inspection, maintenance, vegetation management, and repair are expected to be more difficult and more costly for the Wetland Route. In the Wetland Route, the line would also face exposure to damage from danger trees due to the slope to the west of the line. Hoover/Storo 9/24/07 pf. at 7–14; Disorda 9/24/07 pf. at 3, 6–7; tr. 11/2/07 at 141 (Hollenbaugh).

6. Locating the 115 kV transmission line through the McCabe Brook wetland complex would result in significant adverse impacts on the wetland that would be avoided with VELCO's proposed route through the Meach Cove property. Hollenbaugh 9/24/07 pf. at 7; Clapp 9/24/07 pf. at 3–6; findings 7 through 10, below.

7. The McCabe Brook wetlands that would be impacted by the Wetland Route are Class II wetlands. The functions and values associated with these wetlands include wildlife habitat (both bobcat and excellent deer wintering habitat), water-quality protection, erosion control, sediment retention, nutrient production, floodwater and stormwater storage, production export, visual quality and aesthetics. Clapp 9/24/07 pf. at 4; Quackenbush 10/16/07 pf. at 2.

8. The Wetland Route would result in impacts to an additional 0.6 acres of wetlands and .07 acres of wetland buffer. Also, the Wetland Route would result in an estimated 1.21 acres of additional permanent impacts to forested wetlands. Clapp 9/24/07 pf. at 4.

9. The Wetland Route would significantly diminish the functions and values of the McCabe Brook wetland complex. First, the line would traverse the heart of the wetland itself. Second, a portion of the McCabe Brook wetland is forested, with an exceptional buffer zone of forested ledge. The Wetland Route would require an extensive amount of initial clearing, would require on-going maintenance of the right-of-way, and, with its "zig-zag" route, would maximize rather than minimize the amount of clearing needed. The clearing of the forested buffer would diminish or eliminate the wildlife habitat function of the wetland, as the trees act as cover and browse for the deer and bobcat. In general, it is difficult to compensate for impacts to forested wetlands as they take so long to mature. Quackenbush 10/16/07 pf. at 3–4; tr. 11/2/07 at 3, 37–49 (Quackenbush).

10. All of the functions that would be adversely impacted by the Wetland Route are important to the McCabe Brook wetland complex, and are even more significant when considered along with the contiguous La Platte wetland complex. Quackenbush 10/16/07 pf. at 4; tr. 11/2/07 at 3 (Quackenbush).

11. The Wetland Route would require approval from the Agency of Natural Resources ("ANR") in the form of a Conditional Use Determination ("CUD"). The ANR has indicated that it is unlikely to issue the requisite CUD for the Wetland Route, although in response to questioning from Board staff ANR's witness stated that ANR's analysis might change if the Board determined that the Limerick Road Route were not acceptable. Clapp 9/24/07 pf. at 6; tr. 11/2/07 at 13, 89–90 (Quackenbush).

#### **IV. DISCUSSION**

In our June 25 Order, we concluded that the above-ground Limerick Road route through the Meach Cove property would be acceptable, if VELCO made certain specified modifications to the route and if there was no viable alternative through the McCabe Brook wetland complex. While a McCabe Brook route is technically feasible, the evidence demonstrates that it would be problematic to construct, maintain, and repair, and even more significantly, would result in significant negative impacts to the functions and values of this wetland complex, such that obtaining the necessary wetland permit from ANR appears extremely uncertain. Given these considerations, we conclude that the McCabe Brook does not represent a viable alternative location for the 115 kV line.

We therefore conclude that VELCO's Limerick Road route through the Meach Cove property should be approved. VELCO has made the revisions to that route that we required in our June 25 Order, except that VELCO has not relocated poles 271–274 due to Meach Cove's preferences. VELCO has presented a valid rationale for not moving these poles, and we approve the plans for the Limerick Road route as filed by VELCO on August 15, 2007.

However, notwithstanding our approval of VELCO's Limerick Road route, there remains the possibility that the total cost of this segment of the line, including compensation ultimately paid to Meach Cove for the right to locate the line on its property in accordance with the Limerick Road route, could approach the cost of a design with a portion of the line placed

underground.<sup>3</sup> If the involved parties (i.e., VELCO, Meach Cove, the Vermont Department of Public Service, and Shelburne) reach an agreement on a route that involves a portion of the line being placed underground as an alternative to the above-ground Limerick Road route, and if the costs to Vermont ratepayers of the underground route are estimated to be reasonably comparable to those of the above-ground Limerick Road route, then this Board would likely approve of the underground route, assuming that it presented no significant adverse impacts under the criteria of Section 248.

So that there is no misunderstanding the meaning of today's Order, we are *not* requiring VELCO to work with the other involved parties to evaluate an underground alternative. We are mindful of the need to avoid any undue delays in the construction of this line. However, VELCO may wish to consider whether an agreed-upon underground (or partially underground) alternative might prove more expeditious as well as reasonably comparable in cost, in that it would presumably avoid the time and expense of condemnation proceedings for the Meach Cove property.

Based on all of the above considerations, we conclude that VELCO's August 15, 2007, proposed plans for the Limerick Road route through the Meach Cove property represent the preferred location and design for this segment of the 115 kV line, and are therefore approved.

SO ORDERED.

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3. Meach Cove has indicated that it would desire to have approximately 1,600 to 1,900 feet of the line placed underground. Tr. 11/1/07 at 30 (Davis).

Dated at Montpelier, Vermont, this 10<sup>th</sup> day of December, 2007.

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_____	)	PUBLIC SERVICE
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s/David C. Coen	)	BOARD
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_____	)	OF VERMONT
s/John D. Burke	)	

OFFICE OF THE CLERK

FILED: December 10, 2007

ATTEST: s/Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*